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0000175354

1 Thomas A. Loquvam  
Thomas L. Mumaw  
2 Melissa M. Krueger  
Amanda Ho  
3 PINNACLE WEST CAPITAL CORPORATION  
4 400 North 5th Street, MS 8695  
Phoenix, Arizona 85004  
5 Tel: (602) 250-3630  
6 Fax: (602) 250-3393  
E-Mail: [Thomas.Loquvam@pinnaclewest.com](mailto:Thomas.Loquvam@pinnaclewest.com)  
7 [Thomas.Mumaw@pinnaclewest.com](mailto:Thomas.Mumaw@pinnaclewest.com)  
8 [Melissa.Krueger@pinnaclewest.com](mailto:Melissa.Krueger@pinnaclewest.com)  
9 [Amanda.Ho@pinnaclewest.com](mailto:Amanda.Ho@pinnaclewest.com)  
Attorneys for Arizona Public Service Company

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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE - CHAIRMAN  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

IN THE MATTER OF THE  
APPLICATION OF ARIZONA PUBLIC  
SERVICE COMPANY FOR A HEARING  
TO DETERMINE THE FAIR VALUE OF  
THE UTILITY PROPERTY OF THE  
COMPANY FOR RATEMAKING  
PURPOSES, TO FIX A JUST AND  
REASONABLE RATE OF RETURN  
THEREON, TO APPROVE RATE  
SCHEDULES DESIGNED TO DEVELOP  
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**ARIZONA PUBLIC SERVICE  
COMPANY'S RESPONSE IN  
OPPOSITION TO EFCA'S MOTION  
TO COMPEL**

IN THE MATTER OF FUEL AND  
PURCHASED POWER PROCUREMENT  
AUDITS FOR ARIZONA PUBLIC  
SERVICE COMPANY.

DOCKET NO. E-01345A-16-0123

1 Arizona Public Service Company ("APS") respectfully requests that the Presiding  
2 Officer deny Energy Freedom Coalition of America, LLC's ("EFCA") Emergency Motion  
3 to Compel Production of Barbara Lockwood Calendar In Advance of Lockwood  
4 Deposition (the "Motion"). EFCA's Motion has contrived an "emergency" that is simply  
5 the latest gambit in EFCA's discovery assault on APS. While refusing to answer even the  
6 most basic data requests that APS and Commission Staff have served on EFCA, EFCA  
7 has launched a steady torrent of complex, sometimes intrusive and even harassing data  
8 requests, including seeking the personal calendars of essentially all of APS' top  
9 officers. Ms. Lockwood's calendar, which is the subject of the present motion, is but the  
10 first to come before the Presiding Officer for review.

11 EFCA's Motion should be denied. First, contrary to EFCA's assertion, Ms.  
12 Lockwood's calendar from May 2015 through the present has nothing to do with whether  
13 she has made prior inconsistent statements. (See Motion at 3). Calendars show scheduled  
14 events, not statements. Second, EFCA's claim that it is entitled to 20 months of her  
15 calendar because there might be a "misalignment between the compensation and  
16 ratepayers interests" (Motion at 4) is both baseless and irrelevant to the issue of whether  
17 such compensation is reasonable. If EFCA had any factual support for such a claim, it  
18 would have set forth that basis. In fact, there is no basis for such a claim. Moreover,  
19 there is no legitimate connection between the daily activities of a single utility employee  
20 and the issues relevant in this proceeding. Nor could EFCA realistically use the entries in  
21 Ms. Lockwood's calendar for EFCA's claimed purpose. A year and a half of her calendar  
22 – most of which is after the test year – is, at best, an imperfect and incomplete window  
23 into what were and were not her "day to day activities." (Motion at 2). Finally, given  
24 EFCA's conduct in other recent proceedings, the data request can only be seen as an abuse  
25 of discovery, constituting either harassment or an improper attempt to obtain competitive  
26 information through the guise of a data request.

27 **I. STATEMENT OF FACTS**

28 EFCA has insisted on taking Ms. Lockwood's deposition before EFCA files direct

1 testimony. On October 7, 2016, EFCA served a data request on APS seeking “a complete  
2 copy of Barbara Lockwood’s calendar from May 2015 through the date of the response  
3 hereto.” See APS Response to EFCA Data Request 4.2, attached as Exhibit 1. APS  
4 served its objection on October 18, 2016, explaining that the request was neither relevant  
5 nor reasonably calculated to lead to the discovery of admissible evidence. *Id.* On  
6 November 17, 2016, the Presiding Officer issued a Procedural Order permitting one 8  
7 hour deposition of Ms. Lockwood. Inexplicably, EFCA waited until December 5, 2016 (a  
8 month and a half after receiving APS’s objection) to file its “emergency” Motion.

9 Meanwhile, EFCA served an additional data request seeking the personal calendars  
10 for 2015 for APS’s top 10 highest paid employees. See EFCA Data Request 18.1,  
11 attached as Exhibit 2. While that additional data request is not directly at issue in this  
12 motion, it demonstrates that EFCA intends to pursue this irrelevant and harassing  
13 discovery against a host of other APS employees as well, most of whom are not even  
14 witnesses in this proceeding.

15 Other proceedings highlight the real purpose of EFCA and its members, including  
16 SolarCity. Examples abound of SolarCity, through its solar advocacy organizations such  
17 as EFCA, its predecessor TASC (The Alliance for Solar Choice), and the media-focused  
18 TUSK misusing the discovery process for purposes of delay, harassment and  
19 embarrassment. For example, in February of 2015, TUSK released SRP documents—  
20 obtained by SolarCity through TASC during SRP’s 2015 rate proceeding—to the *Arizona*  
21 *Republic* disclosing tuition reimbursement amounts made to SRP executive’s children.  
22 Robert Anglen, *Tuition Benefits for kids of SRP Execs Rile Critics*, *Ariz. Republic*, Feb. 6,  
23 2015 at A.1, attached as Exhibit 3. EFCA then took out advertisements in the *Arizona*  
24 *Republic* identifying the individuals by name. See “SRPRevealed.com” advertisements,  
25 attached as Exhibit 4.

## 26 **II. ARGUMENT**

27 EFCA’s motion cites little if any authority in support of the “emergency” relief it  
28 seeks. And both the Arizona Rules of Civil Procedure and the Arizona Administrative

1 Code demonstrate that the motion should be denied. To maintain the integrity of the  
2 discovery process and to ensure that no witness is harassed, the Arizona Rules of Civil  
3 Procedure grant broad discretion to issue protective orders. *See City of Casa Grande v.*  
4 *Ariz. Water Co.*, 199 Ariz. 547, 555, ¶ 26, 20 P.3d 590, 598 (Ct. App. 2001). The court  
5 “may make any order which justice requires to protect a party or person from annoyance,  
6 embarrassment, oppression, or undue burden or expense.” Ariz. R. Civ. P. 26(c)  
7 (emphasis added). The Motion seeks to enforce data requests that unfairly burden and  
8 harass both APS and Ms. Lockwood. Under these circumstances, Rule 26(c) makes clear  
9 that the Presiding Officer can and should deny the Motion in order to protect APS and Ms.  
10 Lockwood from annoyance, embarrassment, oppression, or undue burden and expense.  
11 *See Casa Grande*, 199 Ariz. at 555.

12 Furthermore, while APS does not challenge EFCA’s right to discovery in this  
13 matter, that right is not unlimited. To the contrary, the Arizona Administrative Code  
14 empowers the “presiding officer [to] direct that a prehearing conference shall be held...  
15 which may expedite orderly conduct and disposition of the proceedings or settlements  
16 thereof.” A.A.C. R14-3-108(A). Particularly relevant here is the code’s theme of  
17 “formulating or simplifying the issues, obtaining admissions of fact and of documents  
18 which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or  
19 prepared expert testimony, limitation of number of witnesses and consolidation of the  
20 examination of witnesses.” *Id.* These data requests are the opposite of that which the  
21 rules promote: the requests burden parties and non-parties, they expand the scope of  
22 proceedings into the daily affairs of individuals, and “unduly broaden[s] the issues”,  
23 something EFCA explicitly promised it would not do when asking to be permitted to  
24 intervene. *See EFCA’s Application for Leave to Intervene* at p. 2 (July 15, 2016).

25 (a) **EFCA Does Not Need Ms. Lockwood’s Calendar to Examine Her About**  
26 **Prior Statements**

27 In its first argument in support of its motion to compel, EFCA asserts that “Ms.  
28 Lockwood’s prior statements are discoverable.” (Motion at 3). But that point is not at

1 issue in this motion. EFCA is free to—and presumably will—ask Ms. Lockwood what  
2 non-privileged statements she has made to anyone on a “topic relevant to her testimony.”  
3 (Motion at 3). Her calendar simply has nothing to do with the discoverability of any such  
4 statement.

5 EFCA’s unexplained contention that Ms. Lockwood’s calendar will somehow  
6 reveal these hypothetical “inconsistencies” strains credulity. Calendars note actual and  
7 potential events, not statements, inconsistent or otherwise. EFCA’s claim that the subject  
8 line of calendared meetings might theoretically reveal specific statements made in those  
9 meetings is unsupported conjecture.

10 Moreover, EFCA’s data request goes far beyond data that might be “useful for  
11 discovering those statements.” (Motion at 3.) It is not limited to meetings she actually  
12 attended. As with any busy professional, Ms. Lockwood’s calendar frequently includes  
13 meetings or events that she did not actually attend because plans changed, the meeting  
14 was canceled, emergencies arose or for any number of other reasons. Nor is the data  
15 request limited to meetings relating to topics on which she will testify. Nor is it limited to  
16 the relevant time frame, the 2015 test year. To the contrary, EFCA seeks every single  
17 calendar entry over a period of 20 months. The request is vastly overbroad, even if  
18 EFCA’s contrived “inconsistent statements” fishing expedition could somehow be  
19 construed to have merit. *See. e.g., Petersen v. Daimlerchrysler Corp.*, No. 1:06-CV-108-  
20 TC-PMW, 2010 WL 3064367 (D. Utah July 30, 2010) (denying motion to compel  
21 production of plaintiffs’ personal calendars where the information sought was only  
22 marginally or potentially relevant and had a high potential to impose “annoyance,  
23 embarrassment, oppression, or undue burden.” ).

24 Finally, as explained more fully below, EFCA’s overbroad request reveals that  
25 EFCA’s Motion does not seek evidence about Ms. Lockwood’s prior statements, but  
26 rather, seeks information in hopes of harassing or embarrassing her in public, or to obtain  
27 improper competitive advantage. EFCA’s record of reckless public attacks on utility  
28 officials and their children speaks for itself. Moreover, revealing to a competitor like



1 Solar City—EFCA’s largest member—the daily work details of APS’s regulatory officer  
2 would be an unfair competitive advantage by revealing, for instance, APS’s priorities and  
3 which market participants APS does and does not meet with.

4 **(b) EFCA’s Compensation Claim Should Be Rejected as it is Irrelevant.**

5 EFCA’s argument that “Ms. Lockwood’s calendar is relevant because APS rate  
6 based a portion of her compensation” relies upon flawed claims and theories. As an initial  
7 matter, EFCA’s assertion that “[APS] does not dispute that [Ms. Lockwood’s] calendar is  
8 relevant to this issue” is untrue. (Motion at 4). APS has not, and does not, make any such  
9 concession. In fact, APS’s objection to this data request was precisely that the data request  
10 was irrelevant. Indeed, the Motion should be denied because the calendar is irrelevant,  
11 and it is not likely to lead to the discovery of anything relevant for EFCA’s stated  
12 purpose. See *Harris v. Purcell*, 193 Ariz. 409, 973 P.2d 1166 (1998) (“Where proposed  
13 discovery pursues a theory that is neither germane nor probative, denying it cannot be an  
14 abuse of discretion.”). By way of comparison, other parties (including rooftop solar  
15 advocates) have submitted data requests in this proceeding that demonstrate a tough, but  
16 fair position. Vote Solar, for instance, has propounded 118 data requests (including  
17 subparts) to APS covering several broad, substantive issues and seeking substantial  
18 amounts of data. EFCA’s request goes far beyond this, and as demonstrated below, it is  
19 clear that calendar is not relevant and unlikely to lead to relevant information for this rate  
20 making proceeding.

21 First, EFCA’s implicit suggestion that Ms. Lockwood’s salary might be incorrectly  
22 allocated is without any support in the record of this or any other proceeding. Ms.  
23 Lockwood devotes essentially all of her time to APS. Indeed, Ms. Lockwood is Vice  
24 President of Regulation for APS, and APS’ parent is not a regulated entity. EFCA does  
25 not and cannot make a good faith allegation that Ms. Lockwood devotes her compensated  
26 time to anything except the business of APS.

27 In any event, even a hypothetical claim that Ms. Lockwood’s salary requires  
28 allocation would not have any material, or even close to material, impact on this rate case.

1 The importance of EFCA's claims, viewed in context of the broader issues raised in this  
2 proceeding, support denying EFCA's motion. *See* Ariz. Rule of Civil Procedure 26(b)(C)  
3 (providing that discovery can be limited if, among other items, it is "unduly burdensome  
4 or expensive, given the needs of the case, the amount in controversy, limitations on the  
5 parties' resources, and the importance of the issues at stake in the litigation.").

6 Second, even if the allocation of Ms. Lockwood's specific salary were a  
7 meaningful issue for this rate case (which it is not), production of 20 months of her  
8 personal calendar is not an effective or even a reasonable method to address allocation for  
9 at least two reasons: (1) a calendar is not an accurate measure of how working time is  
10 actually allocated; and, (2) no company, including APS, pays employees based on their  
11 calendar entries. As previously noted, an executive's day is highly subject to disruption  
12 by, among other things, conversations or meetings that occur outside of a pre-planned and  
13 scheduled calendar event, as well as work on nights or weekends. A day that contains no  
14 scheduled meetings on paper could include 15 hours of non-stop work late into the  
15 evening. Conversely, a day full of scheduled meetings concerning certain topics could be  
16 suddenly cast aside to accommodate an emerging and unforeseen issue. In other words,  
17 Ms. Lockwood's calendar does not even purport to be a description of what she actually  
18 does during any particular day. And no corporate compensation committee would  
19 determine compensation or allocation based upon the number of meetings or events listed  
20 on an executive's calendar.

21 In addition, EFCA's proposed method of creating a link between the entries on her  
22 calendar and the allocation of her salary would be inefficient and a waste of time. After  
23 obtaining 20 months of granular daily calendar entries, EFCA claims that it will ask Ms.  
24 Lockwood how each entry relates to APS—apparently on a meeting by meeting basis.  
25 (Motion at 4) (explaining EFCA's intent to use the calendar to ask: "'How did this  
26 meeting advance ratepayer interests as opposed to shareholders interests.'"). Even  
27 assuming this is a relevant distinction (it is not), this exercise would quickly consume  
28 more than the entire 8 hours allocated for the deposition.

1 If EFCA has an honest interest in learning how Ms. Lockwood spends her time, the  
2 best way is to ask her. EFCA will have this opportunity at the deposition.

3 (c) **EFCA's Motion and Conduct Demonstrate that the Information is**  
4 **Sought for Harassment and Other Improper Purposes.**

5 Given the attenuated connection between Ms. Lockwood's calendar and the rate  
6 issues in this case, APS is gravely concerned that SolarCity, through EFCA, is using  
7 discovery in this case for harassment or improper competitive purposes.<sup>1</sup> It would not be  
8 the first time.

9 As previously noted, SolarCity, through EFCA's predecessor TASC and its media-  
10 focused TUSK, sought compensation-related information about executives at SRP that  
11 TASC obtained through data requests in an SRP rate proceeding. SolarCity, through its  
12 agents, then published ads in Arizona newspapers to harass and embarrass those  
13 individuals and their children. *See* Exhibit 4.

14 EFCA's past conduct reveals that an order requiring production of the calendar  
15 puts Ms. Lockwood and her family's privacy at risk.<sup>2</sup> EFCA may also be seeking detailed  
16 information about the "day to day" activities of the APS Regulatory Vice President to gain  
17 competitively sensitive information. EFCA and its members are self-professed  
18 competitors of APS. In its Supplemental Response to request 1.10 of APS's First Set of  
19 Data Requests to EFCA, EFCA alleges that one of its members is in direct competition  
20 with APS. Specifically, EFCA stated: "Even if EFCA could gain access to SolarCity's  
21 trade secret, confidential business materials, it wouldn't distribute them to APS, which is  
22 now a direct competitor in the rooftop solar market." Similarly, in the federal anti-trust  
23 lawsuit that SolarCity Corporation has brought against Salt River Project Agricultural  
24 Improvement and Power District, CV-15-00374-PHX-DLR, SolarCity alleges that  
25 "SolarCity directly competes with SRP in the retail market because SolarCity offers

26 <sup>1</sup> *See, American Family Mutual Ins. Co. v. Grant*, 222 Ariz. 507, 512, 217 P.3d 1212, 1217 (App.  
27 2009) (identifying "the right of witnesses to be free from unduly intrusive or burdensome  
28 inquiries and the need to prevent broad-ranging discovery forays that serve to increase the cost,  
length, and burden of litigation with little or no corresponding benefit.").

<sup>2</sup> EFCA's offer to redact personal information does not resolve its overbroad request.



1 equipment and services that provide power—specifically solar power—to customers.”  
2 SolarCity Corp. v. SRP Agricultural Improvement & Power Distr., Compl. at ¶ 37.

3 Even the incomplete and potentially misleading calendar of APS’s Regulatory Vice  
4 President—although not useful to allocate in any detail how she spends her time—could  
5 reveal substantial information that would be useful to a competitor, including (i) APS’s  
6 priorities, market concerns and plans, and regulatory strategies; and (ii) which market  
7 participants APS does and does not meet with. It would be an abuse of the discovery  
8 process for EFCA to attempt to use the data requests to obtain information for its  
9 competitive benefit. Moreover, that EFCA on the one hand contends that APS should not  
10 receive materials claimed to be SolarCity’s “confidential business materials,” but on the  
11 other hand, seeks to investigate the daily priorities of APS’s regulatory vice president, is  
12 an inconsistency that undermines EFCA’s pursuit of Ms. Lockwood’s calendar.

13 Finally, EFCA’s request for Ms. Lockwood’s calendar through the present day  
14 belies its claim that the information is sought for a proper purpose. EFCA’s purported  
15 motive for requesting Ms. Lockwood’s calendar is to determine how her time was spent  
16 for the purposes of the rate case. However, the only relevant evidence for the rate case is  
17 material from the test year, 2015. EFCA knows this, but elected to expand its pursuit of  
18 material instead up until the present day. If EFCA truly intended to use the calendar for  
19 evaluating the allocation, it would have limited its request to 2015. EFCA did not do so,  
20 further exposing its intent to harass Ms. Lockwood and APS, obtain competitive  
21 information, or investigate acts outside the test year.

22 **(d) EFCA Manufactured This “Emergency.”**

23 EFCA received APS’ objections to producing Ms. Lockwood’s calendar on  
24 October 18, 2016. It chose to wait nearly two months before moving to compel. EFCA’s  
25 failure to respond in an appropriate time and manner should not be rewarded by forcing  
26 the Presiding Officer’s hand into requiring the disclosure of improper evidence.

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In its Application to Intervene, EFCA represented that it would not “unduly broaden the issues” in this proceeding. EFCA’s Application for Leave to Intervene at p. 2 (July 15, 2016). Yet, granting this Motion would do just that. This proceeding fundamentally concerns the value of APS’s property, the rate of return on that property, the amount of revenue APS needs to continue providing quality electrical service to its customers, and how that revenue should be collected from customers. Inquiries into the daily activities of a single APS employee simply do not contribute meaningfully to this proceeding. Spending time during the hearing in this matter going over entries in an individual’s daily calendar would quickly overwhelm the nature and purpose of this proceeding. And granting this Motion will embolden EFCA to press its data request seeking the daily calendars of the top 10 highest compensation APS employees. If EFCA is permitted to continue seeking irrelevant information, this proceeding will quickly become divorced from its purpose. APS respectfully requests the Presiding Officer deny EFCA’s request for an order compelling APS to provide Ms. Lockwood’s calendar.

RESPECTFULLY SUBMITTED this 7th day of December 2016.

**ARIZONA PUBLIC SERVICE COMPANY**

By

**Thomas A. Loquvam**

Thomas L. Mumaw

Melissa M. Krueger

~~Amanda Ho~~

Attorneys for Arizona Public Service Company

1 Original and 13 copies of the foregoing  
2 filed this 7th day of December 2016, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
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22  
23  
24  
25  
26  
27  
28  
*I hereby certify that I have this day served a copy of the foregoing document on all parties of  
record in this proceeding by regular or electronic mail to:*

1	Albert Acken	Ann-Marie Anderson
2	Ryley Carlock & Applewhite	Wright Welker & Paoule, PLC
3	One N. Central Ave., Ste 1200	10429 South 51st Street., Suite 285
4	Phoenix, AZ 85004-4417	Phoenix, AZ 85009
5		
6	Brendon Baatz	Stephen Baron
7	Manager	Consultant
8	ACEEE	J. Kennedy & Associates
9	529 14th Street N.W., Suite 600	570 Colonial Park Drive, Suite 305
10	Washington, DC 20045-1000	Roswell, GA 30075
11		
12	Patrick Black	Kurt Boehm
13	Attorney	Attorney
14	Fennemore Craig	BOEHM, KURTZ & LOWRY
15	2394 East Camelback Road, Suite 600	36 East Seventh Street, Suite 1510
16	Phoenix, AZ 85016	Cincinnati, OH 45202
17		
18	Jeff Hatch-Miller	Bradley Carroll
19	Utilities Division	Assistant General Counsel, State Regulatory
20	Arizona Corporation Commission	Tucson Electric Power Company
21	1200 W. Washington	88 East Broadway Blvd.
22	Phoenix, AZ 85007	Mail Stop HQE910
23		P.O. Box 711
24	Steve Chriss	Tucson, AZ 85702
25	Senior Manager, Energy Regulatory	
26	Analysis	John B. Coffman
27	Walmart Stores	John B. Coffman, LLC
28	2001 Southeast 10th Street	871 Tuxedo Blvd.
	Bentonville, AR 72716-5530	St. Louis, MO 63119
	Jody Cohn	Kelly Crandall
	Attorney	EQ Research LLC
	Boehm, Kurtz & Lowry	1580 Lincoln Street, Suite 880
	36 E. Seventh St., Suite 1510	Denver, CO 80203
	Cincinnati, OH 45202	

1	C. Webb Crockett	Brittany L. DeLorenzo
2	Attorney	Corporate Counsel
3	Fennemore Craig	IO DATA CENTERS, LLC
4	2394 East Camelback Road, Suite 600	615 N. 48th St.
5	Phoenix, AZ 85016	Phoenix, AZ 85008
6	Jim Downing	Greg Eisert
7	PO Box 70	Director Government Affairs Chairman
8	Salome, AZ 85648	Sun City Homeowners Association
9		10401 W. Coggins Drive
10	Nicholas Enoch	Sun City, AZ 85351
11	Attorney	
12	Lubin & Enoch, P.C.	Giancarlo Estrada
13	349 North Fourth Ave.	Kamper, Estrada and Simmons, LLP
14	Phoenix, AZ 85003	3030 N. Third St., Suite 770
15		Phoenix, AZ 85012
16	Patricia Ferre	
17	P.O. Box 433	Denis M. Fitzgibbons
18	Payson, AZ 85547	FITZGIBBONS LAW OFFICES, PLC
19		P.O. Box 11208
20	Kevin Fox	Casa Grande, AZ 85230
21	Keyes & Fox, LLP	
22	1580 Lincoln Street, Suite 880	Richard Gayer
23	Denver, CO 80203	526 W. Wilshire Dr.
24		Phoenix, Arizona 85003
25	Jason D. Gellman	
26	Snell & Wilmer LLP	Al Gervenack
27	400 E. Van Buren Street, Suite 800	Director
28	Phoenix, AZ 85004	Property Owners & Residents Association
		13815 Camino del Sol
		Sun City West, AZ 85372



1	Meghan Grabel	Tom Harris
2	Attorney for AIC	Chairman
3	Osborn Maledon, P.A.	Arizona Solar Energy Industries Association
4	2929 North Central Avenue	2122 W. Lone Cactus Dr. Suite 2
5	Phoenix, AZ 85012	Phoenix, AZ 85027
6	Garry D. Hays	Chris Hendrix
7	Attorney for ASDA	Director of Markets & Compliance
8	Law Offices of Garry D. Hays, PC	Wal-Mart Stores, Inc.
9	2198 E Camelback Rd, Suite 305	2011 S.E. 10 <sup>th</sup> Street
10	Phoenix, AZ 85016	Bentonville, AR 72716
11	Kevin Hengehold	Kevin Higgins
12	Energy Program Director	Energy Strategies, LLC
13	Arizona Community Action Association	215 South State Street, Suite 200
14	2700 n. 3rd St., Suite 3040	Salt Lake City, UT 84111
15	Phoenix, AZ 85004	
16	Timothy Hogan	Steve Jennings
17	Attorney	AARP
18	Arizona Center for Law in the Public	16165 N. 83rd Ave, Suite 201
19	Interest	Peoria, AZ 85382
20	514 W. Roosevelt St.	
21	Phoenix, AZ 85003	
22	Thomas A. Jerigan	Teena Jibilian
23	139 Barnes Drive, Suite 1	Assistant Chief Administrative Law Judge
24	Tyndall AFB, FL 32403	Arizona Corporation Commission
25		1200 W. Washington
26		Phoenix, AZ 85007
27	Alan Kierman	Briana Kobor
28	Director of Real Estate & Special Counsel	Program Director
	IO Data Centers	Vote Solar
	615 N. 48th Street	360 22nd Street, Suite 730
	Phoenix, AZ 85008	Oakland, CA 94612

1	Samuel L. Lofland	Craig Marks
2	Ryley Carlock & Applewhite	Attorney
3	One N. Central Ave., Ste 1200	AURA
4	Phoenix, AZ 85004-4417	10645 N. Tatum Blvd. Ste. 200-676
5		Phoenix, AZ 85028
6	Jay Moyes	Jason Moyes
7	Moyes Sellers & Hendricks Ltd.	Moyes Sellers & Hendricks Ltd.
8	1850 N. Central Ave., Suite 1100	1850 N. Central Ave., Suite 1100
9	Phoenix, AZ 85004	Phoenix, AZ 85004
10	Michael Patten	Greg Patterson
11	Attorney	Attorney
12	SNELL & WILMER L.L.P.	Munger Chadwick
13	One Arizona Center	916 West Adams Suite 3
14	400 E. Van Buren Street, Suite 1900	Phoenix, AZ 85007
15	Phoenix, AZ 85004-2202	
16	Ebony Payton	Robert L. Pickels, Jr.
17	139 Barnes Drive, Suite 1	Sedona City Attorney's Office
18	Tyndall AFB, FL 32403	102 Roadrunner Drive
19		Sedona, AZ 86336
20	Jason Pistiner	Daniel Pozefsky
21	Singer Pistiner P.C.	Chief Counsel
22	15849 N. 71st Street, Suite 100	RUCO
23	Scottsdale, AZ 85254	1110 W. Washington, Suite 220
24		Phoenix, AZ 85007
25	Steven Puck	Pat Quinn
26	Director Government Affairs	AURA
27	Sun City Homeowners Association	5521 E. Cholla St.
28	10401 W. Coggins Drive	Scottsdale, AZ 85254
	Sun City, AZ 85351	

1	Kaitlyn A. Redfield-Ortiz	Court Rich
2	Lubin & Enoch, P.C.	Attorney
3	349 N. 4th Avenue	Rose Law Group, pc
4	Phoenix, AZ 85003	7144 East Stetson Drive, Suite 300
5		Scottsdale, AZ 85251
6	Rob Robbins	Lawrence Robertson, Jr.
7	President	Attorney At Law
8	Property Owners & Residents Association	210 West Continental Road
9	13815 Camino del Sol	Suite 216A
10	Sun City West, AZ 85372	Green Valley, AZ 85622
11		
12	Timothy Sabo	Jeff Schlegel
13	Snell & Wilmer	SWEEP
14	400 East Van Buren	1167 W. Samalayuca Dr.
15	Suite 1900	Tucson, AZ 85704
16	Phoenix, AZ 85004	
17		
18	Thomas E. Stewart	Sheryl A. Sweeney
19	General Manager	Ryley Carlock & Applewhite
20	Granite Creek Power & Gas LLC	One N. Central Ave., Ste 1200
21	5316 East Voltaire Avenue	Phoenix, AZ 85004-4417
22	Scottsdale, AZ 85254-3643	
23		
24	Gregory W. Tillman	Emily A. Tornabene
25	Senior Manager, Energy Regulatory	LUBIN & ENOCH, PC
26	Analysis	349 North Fourth Avenue
27	Wal-Mart Stores, Inc.	Phoenix, AZ 85003
28	2011 S.E. 10 <sup>th</sup> Street	
29	Bentonville, AR 72716	
30		
31	Janet Wagner	Scott Wakefield
32	Legal Division	Attorney
33	Arizona Corporation Commission	Hienton & Curry, P.L.L.C.
34	1200 W. Washington	5045 N. 12th Street, Suite 110
35	Phoenix, AZ 85007	Phoenix, AZ 85014-3302
36		
37		
38		
39		
40		

1 Paul J. Walker  
2 Executive Director  
3 ConservAmerica  
4 971 South Centerville Road  
5 PMB 139  
6 Sturgis, MI 49091

Anthony Wanger  
President  
IO Data Centers  
615 N. 48th Street  
Phoenix, AZ 85008

7 Charles Wesselhoft  
8 Deputy County Attorney  
9 Pima County  
10 32 North Stone Ave., Suite 2100  
11 Tucson, AZ 85701

Karen White  
Attorney  
Air Force Utility Law Field Support Center  
AFLOA/JACL-ULFSC, 139 Barnes Drive  
Tyndall AFB, FL 32403

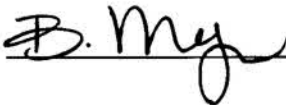
12 Ken Wilson  
13 Western Resource Advocates  
14 2260 Baseline Road, Suite 200  
15 Boulder, CO 80302

Warren Woodward  
200 Sierra Road  
Sedona, AZ 86336

16 Gary Yaquinto  
17 President & CEO  
18 Arizona Investment Council  
19 2100 N. Central Avenue, Suite 210  
20 Phoenix, AZ 85004

Ellen Zuckerman  
Senior Associate  
4231 E. Catalina Drive  
Phoenix, AZ 85018

21 Cynthia Zwick  
22 2700 N. 3rd Street, Suite 3040  
23 Phoenix, AZ 85004

24   
25  
26  
27  
28

# EXHIBIT 1



ENERGY FREEDOM COALITION OF AMERICA'S  
FOURTH SET OF DATA REQUESTS TO  
ARIZONA PUBLIC SERVICE COMPANY REGARDING  
THE APPLICATION TO APPROVE RATE SCHEDULES DESIGNED TO  
DEVELOP A JUST AND REASONABLE RATE OF RETURN  
DOCKET NO. E-01345A-16-0036  
AND  
DOCKET NO. E-01345A-16-0123  
OCTOBER 7, 2016

EFCA 4.2: Please provide a complete copy of Barbara Lockwood's calendar from May 2015 through the date of the response hereto.

Response: APS objects to this request as Ms. Lockwood's calendar is not relevant to the subject matters at issue in APS's pending rate case or reasonably calculated to lead to the discovery of admissible evidence.

# EXHIBIT 2

December 1, 2016

**SENT BY ELECTRONIC MAIL ONLY**

Thomas Loquvam - Thomas.Loquvam@pinnaclewest.com  
Thomas Mumaw - Thomas.Mumaw@pinnaclewest.com  
Melissa Krueger - Melissa.Krueger@pinnaclewest.com  
Pinnacle West Capital Corporation Law Dept.

**RE: Energy Freedom Coalition of America's Eighteenth Set of Data Requests to  
Arizona Public Service Company. Dockets: E-01345A-16-0036; 16-0123**

Dear Messrs. Loquvam and Mumaw and Ms. Krueger:

Please find enclosed the Eighteenth Set of Data Requests from Energy Freedom Coalition of America ("EFCA") to Arizona Public Service Company ("APS") in the above-referenced matter. These requests are submitted pursuant to EFCA's intervention in this Docket(s).

These data requests are continuing, and your answers or any documents supplied in response to these data requests should be supplemented with any additional information or documents that come to your attention after you have provided your initial responses. Please respond within **ten (10)** calendar days. Should you require additional time, please contact me immediately.

Please send electronic copies of your responses, including all attachments, to: Court Rich crich@rosclawgroup.com and Hopi Slaughter - hslaughter@rosclawgroup.com.

Should you have any questions or comments, please feel free to contact me directly at 480-505-3937.

Sincerely,

/s/ Court S. Rich  
Court S. Rich

Attachment

cc: Stefanie Layton - Stefanie.Layton@aps.com  
Leland Snook - Leland.Snook@aps.com  
Kelly Hauert - Kelly.Hauert@aps.com  
Kerri Carnes - Kerri.Carnes@aps.com

**ENERGY FREEDOM COALITION OF AMERICA'S  
EIGHTEENTH SET OF DATA REQUESTS  
TO ARIZONA PUBLIC SERVICE COMPANY  
APS DOCKET E-01345A-16-0036; E-01345A-16-0123**

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**GENERAL INSTRUCTIONS**

1. All information is to be divulged that is in your possession, custody or control, or the possession, custody, or control of your attorneys, investigators, agents, employees, or other representatives, or which you may discover through reasonable inquiry.

2. If you cannot answer a Data Request in full and have exercised thorough diligence in an attempt to secure the information requested, then you must so state. You must also explain to the fullest extent possible the specific facts concerning your inability to answer the Data Request and supply whatever information or knowledge you have concerning any unanswered portion of the Data Request.

3. If your answer to any Data Request is "unknown," "not applicable," or any other similar phrase or answer, state the following:

- a. Why the answer to that Data Request is "unknown" or "not applicable";
- b. The efforts made to obtain answers to the particular Data Request; and
- c. The name and address of any person who may know the answer.

4. Where a Data Request requires you to state facts you believe support a particular allegation, contention, conclusion or statement, set forth with particularity:

- a. All facts relied upon;
- b. The identity of all lay and expert witnesses who will or may be called to testify with respect to those facts.

5. If you contend that the answer to any Data Request is privileged, in whole or in part, or if you object to any Data Request, in whole or in part, state the reasons for such objection and identify each person having knowledge of the factual basis, if any, on which the privilege is asserted.

6. Where an individual Data Request calls for an answer that involves more than one part, each part of the answer should be clearly set out so that it is understandable.

7. These Data Requests are intended as continuing Data Requests which require that you supplement your answers setting forth any information within the scope of the Data Requests as may be acquired by you, your agents, attorneys or other representatives following the service of your original answer.

**ENERGY FREEDOM COALITION OF AMERICA'S  
EIGHTEENTH SET OF DATA REQUESTS  
TO ARIZONA PUBLIC SERVICE COMPANY  
APS DOCKET E-01345A-16-0036; E-01345A-16-0123**

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**DEFINITIONS**

As used in these Data Requests the following terms have the meanings set forth below:

1. "You" or "your" refer to and are meant to include, Arizona Public Service ("APS") and all of its agents, attorneys, investigators, employees, representatives, officers, directors, managers, members, subsidiaries, and parent companies, and separate answers should be given for each.

2. "Document" refers to any physical or electronic thing containing information or from which information can be discerned including, without limitation, any affidavit, agreement, appraisal, audio tape, bank trust, book, bid, book of account, cd-rom, check, computer disk, contract, correspondence (sent or received), declaration of trust, deed, deposition, diagram, diary, drawing, e-mail, instrument, invoice, lease, ledger, memorandum, memorandum of lease, note, notes of conversation (typed or written), outline, paper pamphlet, partnership agreement, photograph, receipt, recording (whether or not transcribed), report, statement, study, text message, transcript, trust instrument, visual depiction, voicemail, voucher, and any other such physical objects and things and any data compilation(s) from which information can be obtained, translated through dictation devices into reasonably usable form when translation is practicably necessary. "Document" or "Documents" further include any and all "*original*" or "*duplicate*" "*writings*," "*recordings*" or "*photographs*" (as those italicized terms are defined in Rule 1001 of the Arizona Rules of Evidence<sup>1</sup>), whether stored electronically or in traditional paper files and including (but not limited to) all "*writings*" and "*recordings*" memorializing or constituting any communications, data, files or information stored on any computer, computer software, computer programs, computer system, or electronic media, of every kind and description, however produced or reproduced, WHETHER DRAFT OR FINAL, including (but not limited to) all communications, documentation, letters, correspondence, e-mail, Internet Web Pages, memoranda, notes, films, transcripts, contracts, agreements, licenses, memoranda or notes of

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<sup>1</sup> Rule 1001 provides, in pertinent part:

**"Rule 1001. Definitions. For purposes of this article the following definitions are applicable:**

- (1) **Writings and recordings.** "*Writings*" and "*recordings*" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation."
- (2) **Photographs.** "*Photographs*" include still photographs, x-ray films, video tapes, and motion pictures.
- (3) **Original.** An "*original*" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "*original*" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "*original*".
- (4) **Duplicate.** A "*duplicate*" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original."



**ENERGY FREEDOM COALITION OF AMERICA'S  
EIGHTEENTH SET OF DATA REQUESTS  
TO ARIZONA PUBLIC SERVICE COMPANY  
APS DOCKET E-01345A-16-0036; E-01345A-16-0123**

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telephone conversations or personal conversations, telephone messages, microfilm, telegrams, books, newspaper articles, magazines, advertisements, marketing materials, periodicals, bulletins, circulars, pamphlets, statements, notices, reports, rules, regulations, directives, teletype messages, minutes of meetings, lists of persons in attendance, interoffice communications, reports, summaries, financial statements, ledgers, books of account, proposals, prospectuses, schedules, organization charts, offers, orders, receipts, working papers, calendars, appointment books, diaries, time sheets, logs, movies, tapes for visual or audio reproduction, recordings, or materials similar to any of the foregoing, however denominated, and including writings, drawings, graphs, charts, photographs, data processing results, printouts and computations (both in existence and stored in memory components), and other compilations from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form. THE TERM "DOCUMENT" INCLUDES ALL DUPLICATES OF A DOCUMENT WHICH CONTAIN ANY ADDITIONAL HANDWRITING, UNDERLINING, NOTES, DELETIONS, OR ANY OTHER MARKINGS, MARGINALIA OR NOTATIONS, OR ARE OTHERWISE NOT IDENTICAL COPIES OF THE ORIGINAL.

3. "Possession" and "custody" include the joint or several possession, custody or control of the above named or its agents, attorneys, employees, officers, directors, managers, members, subsidiaries, parent companies, and representatives.

4. "And" and "Or" and any other conjunctions or disjunctions used herein shall be read both conjunctively and disjunctively so as to require the provision of all information responsive to all or any part of each particular Data Request in which any conjunction or disjunction appears.

5. "Any," "Each" and "All" shall be read to be all inclusive.

6. "Relating to" or "Related to" means referring to, relating to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, showing, demonstrating, memorializing, describing, mentioning, reflecting, analyzing, comprising, supporting, sustaining, constituting, evidencing, and pertaining to, whether in whole or in part.

**ENERGY FREEDOM COALITION OF AMERICA'S  
EIGHTEENTH SET OF DATA REQUESTS  
TO ARIZONA PUBLIC SERVICE COMPANY  
APS DOCKET E-01345A-16-0036; E-01345A-16-0123**

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**DATA REQUEST**

**EFCA 18.1** Please provide complete copies of the calendars of APS's top ten highest paid employees during the test year.

# EXHIBIT 3

## Tuition benefits for kids of SRP execs rile critics

Arizona Republic - Phoenix, Ariz.

Subjects: Electric utilities; Colleges & universities; Public utilities; Education; Corporate profits; Investments; Electricity distribution; Tuition; Electric rates

Author: Anglen, Robert

Date: Feb 6, 2015

Start Page: A.1

Section: Front

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### Document Text

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Salt River Project officials are calling for a rate increase this month, saying existing revenue is not sufficient to pay for coal and gas plants and other investments needed on the power grid.

But critics of the proposed increase, which would generate \$110 million annually for Arizona's second-biggest utility, note SRP executives have for years spent millions of ratepayer dollars on an education perk that has paid for their children to attend some of the nation's top schools.

Records show 77 executives received a total of \$2.6 million in tuition assistance between 2009 and 2014 to send their children to Arizona schools, as well as Johns Hopkins, Georgetown, Duke and the Massachusetts Institute of Technology.

The reimbursement rate is based on how much it would cost to enroll in a graduate or undergraduate program at one of Arizona's three universities. So the benefit covers students attending expensive out-of-state schools, but is capped at the state's tuition rate.

Fees are reimbursed up to a maximum of \$10,000 per semester, according to SRP's published guidelines, with additional caps on what can be spent on books.

Executives, including SRP's general manager, vice president and lobbyists, have each received \$35,000 to \$100,000 in tuition assistance in the past five years.

Arizona Public Service Co., the state's largest electric utility, does not have a tuition-reimbursement program for children of executives, spokesman Jim McDonald said. The company does reimburse employees for work-related education.

SRP officials said the program, launched in 2000, helps the utility remain competitive in the job market, hiring talented executives who work to maintain low utility rates. They said criticism of the program is being driven by solar companies unhappy with SRP.

"As a non-profit public power utility, SRP employee compensation does not include stock options and other similar offerings that are often provided to other highly-skilled professionals in the utility industry," SRP spokesman Scott Harelson said in an e-mailed statement. "Tuition reimbursement is an alternative that not only helps retain top talent, it provides for higher education opportunities, particularly given the high cost of education."

One ratepayer critical of the program said the utility should not be using ratepayer money for lucrative benefits.

"SRP execs get lavish perks," said Mark Mulligan of Tempe. "They maintain those perks and salaries by both raising rates and killing competition. ... This should be stopped. These guys are not operating in the public's interest as a non-profit."

SRP is a political subdivision of the state. The municipal utility operates as a non-profit, with its net revenues redirected into its water and power operations.

Mulligan is among hundreds of SRP customers challenging the utility's proposal to raise rates on solar customers by about \$50 per month. They say the rate increase would severely damage the solar industry and turn rooftop-solar investments into costly liabilities.

They maintain the rate increase is calculated to protect the company's revenue from customers who generate some of their own power.

In addition to the \$50 increase on solar customers, SRP officials proposed an average 3.9 percent across-the-board increase for nearly 1 million customers beginning in the spring. The combined increases would generate \$110 million annually.

SRP officials said the increase would offset more than \$1 billion they spent to build a natural-gas power plant and pay for other grid upgrades.

SRP is overseen by a board of directors elected by property owners within its territory. The board will hold its last public hearing on the rate hike Monday in Tempe. It is scheduled to vote Feb. 26.

Harelson said SRP is committed to keeping rates low and the rate increase won't change that.

"Our electricity prices are among the lowest in the Southwest, and will continue to be if the proposed price increase is approved by the Board," he said in an e-mail.

Information documenting the tuition-program expenses was initially sought by a coalition of solar companies called TUSK, or Tell Utilities Solar won't be Killed. It provided more than 60 pages of records to The Arizona Republic, which performed its own analysis.

"This supposedly is a public utility," said Bryan Miller, vice president of Sunrun Home Solar. "The idea that it is subsidizing the tuition for executives' (families) is offensive. ... They are not supposed to be in the for-profit business."

Miller, who co-chairs a TUSK affiliate called the Alliance of Solar Choice, said the salaries and the benefits of SRP executives are excessive and deserve to be discussed publicly alongside the rate hike.

SRP officials say the program is justified because the company pays less than other utilities with which it competes for workers. For example, SRP General Manager Mark Bonsall earned a salary of \$847,672 in fiscal 2013. After pension and other benefits, his compensation totaled about \$1.2 million.

By comparison, the CEO of the parent company of APS, a for-profit company with publicly traded stock, earned a salary of \$1.2 million that year, with stock and other benefits that totaled more than \$8 million.

"They are supposed to be government servants," Miller said. "They are not supposed to be lining their pockets."

SRP would provide salary information for only five executives in addition to the elected president and vice president. But records show some of the executives who received reimbursement made anywhere from \$150,000 to \$847,000 annually.

The amount of individual reimbursements varied dramatically depending on the schools attended, with some executives receiving less than \$100 while others received upward of \$100,000.

Records show that among those who received reimbursement from the tuition program was SRP's lobbyist, Peter Hayes, who currently makes \$33,948 a month or about \$407,000 annually.

Hayes' children received \$74,252 in tuition and book reimbursement between 2009 and 2013.

SRP redacted the records to take out the names of executives' children and their schools.

At least four other executives received similar tuition reimbursements in the past five years, including President David Rousseau, who got \$71,406; associate general manager and chief customer executive Mike Lowe, \$77,941; Bonsall, \$92,689; and resource planning manager John Coggins, \$100,848.

SRP executives received a combined average of \$427,459 each year between 2009 and 2014 in reimbursement for books and tuition.

SRP employees in 10 salary grades are eligible for the program, which is open to children younger than 28 who attend an accredited community college or state or private university.

Harelson said tuition reimbursement does not add to an employee's base salary and should be considered temporary compensation rather than a cumulative pay raise.

"Because SRP's (program) is cost effective and a valued tool for attracting talented individuals, we expect it to continue," he said. "We believe it is cost-effective compensation that allows us to continue to fulfill our mission to provide low-cost and reliable energy to our customers."

Hearing on SRP rate hike will be on Monday

SRP customers have a chance to comment on the proposed rate hike at 9:30 a.m. Monday at the SRP Pera Club, 1 E. Continental Drive in Tempe. The building is south of McDowell Road and west of 68th Street. SRP's board will vote on the rate hike Feb. 26.

Reimbursements by year



SRP executives received \$2.6 million in tuition reimbursement in the past five years, for an average of \$427,459. Here is the annual breakdown:

Year

Tuition

Books

Total

2009

\$286,547

\$20,097

\$306,644

2010

\$391,590

\$22,533

\$414,123

2011

\$346,981

\$22,221

\$369,202

2012

\$370,062

\$19,969

\$390,031

2013

\$535,721

\$30,516

\$566,237

2014

\$494,250

\$24,269

\$518,519

\$2,564,756

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**Abstract** (Document Summary)

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Salt River Project officials are calling for a rate increase this month, saying existing revenue is not sufficient to pay for coal and gas plants and other investments needed on the power grid. Arizona Public Service Co., the state's largest electric utility, does not have a tuition-reimbursement program for children of executives, spokesman Jim McDonald said.

# EXHIBIT 4

# Duke. Georgetown. MIT. Johns Hopkins University.

## Why Are You Paying For The Kids Of High-Priced SRP Executives To Go There?



**It's the perk of all perks, courtesy of SRP ratepayers.**

Your money not only pays for **\$407,000 lobbyists**, it pays expenses for his children – and the children of many SRP executives – to go to college. At some of the most expensive schools in the country.

**That's outrageous.**

Over the past six years nearly **\$2.5 million** has been spent on this perk. Mind you this is not for low-income or underprivileged employees. It is for **highly-paid executives, made possible by ratepayers**. People who can afford to pay for their own expenses.

From **\$5 million on advertising** alone in 2014 (*why exactly does a monopoly need to spend ratepayer money on this?!*) to **strip clubs and perks for well paid executives and their kids**, SRP spends so much money on itself it makes you wonder why they need to raise rates on you. Or kill solar.

**But that's exactly what they are attempting to do.**

The same people abusing ratepayers have **proposed a large rate increase and massive new tax** on rooftop solar users they actually encouraged to go solar in the first place.

Indeed, it is the **most aggressive move against rooftop solar in the nation**, even eclipsing APS' audacious tax plan in 2013. It is widely opposed by likely voters in all political parties according to a recent survey by one of the nation's top pollsters.

Fortunately, the elected SRP Board of Directors can **end or alter this nonsense on February 26.**

Encourage them to do so by visiting

**SRPRevealed.com**

**Surprising.  
SRP Revealing.  
Perplexing.**

# \$2,481,545 Reasons SRP Shouldn't be Raising Rates or Killing Solar

William Abraham  
Bill Aikema  
Bob Anderson  
Kelly Barr  
Gary Barras  
Bill Beck  
John Bistany  
Mark Bonsall  
Mark Braing  
Jeffrey R. Campbell  
Kevin Carlson  
Ralph Chinappi  
John Coggins  
Henry Corven  
Linda Coughenour  
Sam Dahl  
Daniel Dreiling  
Barry Drast  
Charlie Duckworth

John Dure  
Leo Ellis  
Camp Ellis  
Lance Feath  
Michael F  
Kenneth F  
Doug F  
Bruce H  
Dan H  
Herjinder H  
Peter H  
John H  
Steve  
W. Gar  
Mike H  
Mike  
Debbie  
Rob K  
Thomas

John Lee  
Mike Lowe  
Mike Miller  
Murphy  
Navarro, Jr.  
Nichols  
Nielsen  
Nowaczyk  
J. O'Connor  
D. Olsen  
D. Oros  
Pellouchaud  
Powell  
Pratt  
Ramaley  
Reed  
Roberts  
Rousseau

Tom Roston  
Michael Sherman  
Lori Singleton  
Susan Smith  
Russell Smolton  
John Sothe  
Glen Traasdal  
Scott Trout  
John Underhill  
Benson & Vuong  
David Wacholder  
Kevin Wardaja  
Rick Wardrip  
Greg Whicker  
Larry Wilson  
James B. Wood  
Dean Yee  
Carrie Young  
Cheryl Zittle

SRP

SRP

Some names are better known than others. But all should be familiar to Arizonans soon. Because these high-priced Salt River Project executives and lobbyists are getting the perks of all perks, courtesy of ratepayers.

Your money not only pays for a \$407,000 lobbyist\*, it helps pay expenses for his children – and the children of many highly paid SRP executives – to go to college.

(\*Source: public records requests 2014 and 2015)

That's outrageous. Over the past six years nearly \$2.5 million in ratepayer money has been spent on this perk.\* Mind you this is not for low-income or underprivileged employees. It is for the highest paid executives made possible by ratepayers. Executives can afford to pay for their own expenses. (\*Source: public records requests 2015)

From gifts to politicians to pricey benefits for highly-paid executives and their kids\*, SRP spends so much money on itself it makes you wonder why they need to raise rates on you. Or kill solar. (\*Source: public records requests 2014)

But that's exactly what SRP is attempting to do. The people abusing ratepayers have proposed a large rate increase and massive new tax on rooftop solar users, the people that SRP encouraged to go solar in the first place.

Fortunately, the elected SRP Board of Directors can put an end to this nonsense on February 26. They can instill the discipline, responsibility, and innovation they are known for.

Encourage them to do so by visiting

**SRPRevealed.com**

**Surprising.  
SRP revealing.  
Perplexing.**